OCTOBER TERM, 19

No. 115

D. P. SKOUSEN, COIT HUGHES, H. B. [illegible]
H. L. MOSHER,

CONSOLIDATED MOTOR

BRIEF OF RESPONDENTS IN O
PETITION FOR WRI

MAT[illegible]
[illegible] Counsel

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STATUTES CITED

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 115

D. P. SKOUSEN, COIT HUGHES, H. B. HUGHES
H. L. MOSHER,

Petitioners,

vs.

CONSOLIDATED MOTORS, INC.

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Supreme Court of the State of Arizona, filed January 13, 1941, is reported in 109 Pac. 2d 41 and appears at page 98 of the record herein. Rehearing was denied February 10, 1941 (Tr. 97).

Statement of the Case

Respondent brought action in the Superior Court of Maricopa County, Arizona, to quiet title to certain prop-

erty in Phoenix, Maricopa County, Arizona, basing its claim to title on tax deeds issued by the State of Arizona. Issue was joined on the question of the validity of the tax sale. The trial court, after hearing on the merits, gave judgment for petitioners. The Supreme Court of Arizona, on appeal, reversed the judgment of the trial court with instructions to enter judgment quieting respondent's title. A petition for rehearing was denied by the Supreme Court of Arizona.

Summary of Argument

The Petition should be denied because:

1. No federal right, title, privilege or immunity was specially set up or claimed in the state court and no federal question was raised, presented or determined in the state court.
2. No federal question is presented by the Petition filed in this Court.

Argument

1.

The Petition should be denied because:

> No federal right, title, privilege or immunity was specially set up or claimed in the state court and no federal question was raised, presented or determined in the state court.

An examination of the record will disclose that no federal right, privilege or immunity was asserted in the state court nor determined by that court.

No proper case is therefore presented to this Court for review.

Judicial Code, Par. 237; 28 U.S.C. 344(b).

Lynch et als v. New York, 293 U. S. 52; 55 S. Ct. 15; 79 L. Ed. 191.

Mellon v. O'Neil, 275 U. S. 212; 48 S. Ct. 52; 72 L. Ed. 45.

Whitney v. California, 274 U. S. 357; 47 S. Ct. 641; 71 L. Ed. 1095.

2.

The Petition should be denied because:

No federal question is raised by the Petition filed herein.

(a) Petitioners' first question.

The decision of the Supreme Court of the State of Arizona in construing the tax laws of Arizona as placing the burden of proof on one attacking the validity of a tax sale, where the right to rebut such presumption by evidence is not denied, raises no question of due process of law.

Turpin v. Lemon, 187 U. S. 51; 23 S. Ct. 20; 47 L. Ed. 70.

Minneapolis etc. R. Co. v. Minnesota, 193 U. S. 53; 24 S. Ct. 396; 48 L. Ed. 614.

United States v. Illinois Cent. R. Co., 291 U. S. 457; 54 S. Ct. 471; 78 L. Ed. 909.

Straus v. Foxworth, 231 U. S. 162; 34 S. Ct. 42; 58 L. Ed. 168.

Saranac Land etc. Co. v. Roberts, 177 U. S. 318; 20 S. Ct. 642.

(b) Petitioners' second question.

The property was assessed according to a map prepared by the County Assessor pursuant to Section 3084, Revised Code of Arizona, 1928. See Appendix. The state court held the description of the property sufficient under the Arizona statute. No federal question is presented.

See cases under (a), supra.

Ontario Land Co. v. Yardy, 212 U. S. 152; 29 S. Ct. 278; 53 L. Ed. 449.

Dimitry v. Lewis, 150 Miss. 818; 117 So. 265; 278 U. S. 578; 49 S. Ct. 81; 73 L. Ed. 511.

The argument of petitioners (petitioners' brief, pages 8 to 14) raises only a local question,—that is, the construction of a state statute.

(c) Petitioners' third question.

When the tax was levied and assessed both Lots Seven (7) and Eight (8) were under one ownership. Subsequent thereto but before the issuance of a tax deed the petitioner, D. P. Skousen, acquired title to Lot Seven (7) and the north one-half (N1-2) of Lot Eight (8) by foreclosure. Prior to the issuance of a tax deed

the owner of the south one-half (S1-2) of Lot Eight (8) redeemed pursuant to Section 42, Chapter 103, Session Laws of Arizona, 1931 (73-828, Arizona Code Annotated, 1939). See Appendix. The period for redemption having expired and no redemption having been made as to Lot Seven (7) and the north one-half (N1-2) of Lot Eight (8), a tax deed was issued to respondent.

No question of due process is presented.

See cases cited under (a), supra.

Conclusion

It is respectfully submitted that the Petition fails to present grounds sufficient to authorize the issuance of a Writ of Certiorari and the Petition should be denied.

Respectfully submitted,

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Of Counsel.